

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

SANDRA ROXANA UMANA,

*

Plaintiff

*

v.

*

Civil Action No. 8:18-cv-00290-PX

JMD RESTAURANTS, INC.

*

EL AGUILA RESTAURANT, INC.

*

Defendant

MEMORANDUM OPINION AND ORDER

Pending before the Court is the motion to approve Plaintiff Sandra Umana's acceptance of Defendant's offer of judgment. ECF No. 22. For the reasons that follow, the Court DENIES the motion.

Plaintiff worked at Defendant's restaurant as a waitress. ECF No. 1 ¶ 8. Plaintiff alleges that Defendant never paid Plaintiff any wages. *Id.* ¶ 11. To recover the unpaid wages, Plaintiff filed this action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq.; the Maryland Wage and Hour Law ("MWHL"), Md. Code, Lab. & Empl. Article ("LE") § 3-401 et seq.; and the Maryland Wage Payment and Collection Law ("MWPCCL"), Md. Code, LE § 3-501 et seq. ECF No. 1. After informal discovery, Plaintiff alleges that she is owed \$1,957.50. ECF No. 22 ¶ 3.

Defendant served Plaintiff with a Rule 68 Offer of Judgment for \$3,500. ECF No. 18 ¶ 1. Plaintiff filed a notice of acceptance, but did not provide information sufficient for this Court to determine the fairness and reasonableness of the judgment. *Id.* The Court directed the parties to submit a joint motion addressing this issue. ECF No. 21. Plaintiff then brought the instant motion, which still leaves a number of questions unanswered.

When parties to an FLSA dispute seek approval of a Rule 68 Offer of Judgment, “the court will enter judgment when presented with an offer and acceptance only after the court is satisfied that the settlement is a reasonable compromise.” *Banegas v. Gen. Lawn Serv. Corp.*, No. GJH-13-3728, 2014 WL 12740666, at *1 (D. Md. July 17, 2014); *see also Johnson v. Heartland Dental, LLC*, No. PJM 16-2154, 2017 WL 2266768, at *1 n.1 (D. Md. May 23, 2017). The Court considers (1) whether FLSA issues are actually in dispute; (2) the fairness and reasonableness of the settlement; and (3) the reasonableness of the attorneys’ fees, if included in the agreement. *Hackett v. ADF Rest. Invs.*, 259 F. Supp. 3d 360, 365 (D. Md. 2016) (citing *Lynn’s Food Stores, Inc. v. United States*, 679 F.2d 1350, 1354 (11th Cir. 1982)).

Here, the Court has not been given sufficient information relevant to the above factors to approve the Offer of Judgment. In Plaintiff’s latest filing, Plaintiff informs the Court that Plaintiff would be paid \$2,000 and her attorneys would receive \$1,500 in fees and costs. *Id.* ¶ 7. Counsel for Plaintiff suggests that Plaintiff is being provided with the maximum recovery for unpaid wages. *Id.* ¶ 6. Yet, if Plaintiff receives her maximum unpaid wages, then she is only receiving \$42.50 in liquidated damages. This number does not comport, on its face, with the statutory provision of liquidated damages. *See* 29 U.S.C. § 216(b). The parties do not explain how this liquidated damages calculation is fair, or how the wage calculation is affected, if at all, by the statutory provisions applicable to tipped employees. *See* 29 U.S.C. § 203(m)(2). Finally, the parties do not provide any information supporting the requested attorneys’ fees and costs such as hourly rates charged, attorneys’ years of experience, and a general description of tasks performed. Without this basic information, the Court is unable determine whether the current Offer of Judgment is fair and reasonable.

Accordingly, it is this 3 day of October, 2018, by the United States District Court for the District of Maryland, ORDERED that:

1. The Motion for Court Approval of Plaintiff's Acceptance of Defendant's Offer of Judgment (ECF No. 22) filed by Plaintiff Sandra Roxana Umana BE, and the same hereby IS, DENIED WITHOUT PREJUDICE to resubmit a second motion consistent with this Opinion; and
2. The CLERK is DIRECTED to transmit copies of this Memorandum Opinion and Order to counsel for the parties.

October 3, 2018

Date

/S/

Paula Xinis

United States District Judge